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MARK DE CASTRO, PEDRO BRINGAS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADTANGO, INC., a California Corporation, Mark DE CASTRO, an individual, and PEDRO BRINGAS CASADO, an individual	) Civil Action No.
)
PLAINTIFFS,	) COMPLAINT FOR:
)
v.)
LERNA, LLC; LERNA LABS LLC, Alex ROWLAND, an individual; Nelson Becerra, an individual, and DOES 1 through 25, inclusive,	) 1) ACCOUNTING
	) 2) VIOLATION OF THE SECURITIES ACTS OF 1933 (Section 10(b)) AND 1934 (Rule 10b-5)
DEFENDANTS.	) 3) BREACH OF FIDUCIARY DUTY
	) 4) VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25401
Defendants.	) 5) MONEY HAD AND RECEIVED
	) 6) FRAUD
	) 7) UNJUST ENRICHMENT
	) 8) CONVERSION
	) 9) BREACH OF CONTRACT
	) 10) UNFAIR COMPETITION
	) 11) VIOLATION OF 15 U.S.C. § 1125(a)
)
	) and
)
	) DEMAND FOR JURY TRIAL
)

**Verified Complaint for Declaratory and Injunctive Relief
(INJUNCTIVE RELIEF SOUGHT)**

NATURE AND SUMMARY OF THE ACTION

1
2 1. This is an action brought by PLAINTIFFS ADTANGO, INC. (“ADTANGO” or the
3 “Company”), MARK DE CASTRO (“MR. DE CASTRO”), and PEDRO BRINGAS CASADO
4 (“MR. BRINGAS”), (collectively “PLAINTIFFS”) seeking monetary damages and injunctive
5 relief against DEFENDANTS LERNA LLC (“LERNA”), LERNA LABS LLC (“LERNA
6 LABS”), Alex ROWLAND (“MR. ROWLAND”), and NELSON BECERRA (“MR.
7 BECERRA”) (collectively, “DEFENDANTS”) in connection with DEFENDANTS’ wrongful
8 attempt to take control of PLAINTIFFS’ assets. PLAINTIFFS and DEFENDANTS together are
9 referred to herein as (“THE PARTIES”).

10 2. DEFENDANTS’ wrongful acts include, without limitation, fraud, violations of California
11 and Federal Securities laws, conversion, negligent misrepresentation, breach of written contract,
12 unjust enrichment; and trademark infringement.

13 3. Defendants’ began their wrongdoing during the summer of 2014, when Mr. ROWLAND,
14 who, after serving as his boss at a company called Alpha Bird, had become something of a
15 mentor for Mr. DE CASTRO, offered to assist Mr. DE CASTRO with his fast-growing new
16 venture, ADTANGO, Inc.

17 4. Mr. ROWLAND claimed, his company, LERNA was profitable enough to finance
18 ADTANGO’s growth, and through schemes and artifice, has since bilked the company out of
19 more than \$200,000, leaving him well off but the Company (ADTANGO) close to bankruptcy.
20

JURISDICTION AND VENUE

21 5. PLAINTIFFS bring their Complaint under Federal diversity jurisdiction, 28 U.S.C. 1332,
22 as the parties are diverse in citizenship and the amount in controversy exceeds \$75,000.
23

24 6. There is also Federal Question Jurisdiction under the Securities Acts of 1933 and 1934,
25 as well as the LANHAM (TRADEMARK) ACT (15 U.S.C.).

26 7. Venue is proper in this Court pursuant to 28 U.S.C. because a substantial part of the
27 events and omissions giving rise to the claims herein occurred, and a substantial part of the
28 property that is the subject of this action is situated, in this District. Among other things,

1 Defendants undertook their actions, knowing, and with the intention that, they would damage
2 PLAINTIFFS in this District.

3 **THE PARTIES**

4 8. Plaintiff ADTANGO is a California Corporation existing under the laws of the State of
5 California, United States, having its principal place of business in La Quinta, California.

6 9. Plaintiff MR. DE CASTRO is an individual residing in Riverside County, California.

7 10. Plaintiff MR. BRINGAS is an individual residing in Montgomery County, Maryland.

8 11. Defendant LERNA, LLC is a limited liability company existing under the laws of the
9 State of Nevada, United States, having its principal place of business in San Francisco, CA
10 94105.

11 12. Defendant MR. ROWLAND is an individual residing, at all relevant time in this action,
12 in the state of California.

13 13. Defendant Becerra is an individual residing, at all relevant time in this action, in the state
14 of California.

15 14. LERNA LABS LLC is believed to be a fictional entity but its true identity is unknown.

16 **FACTUAL BACKGROUND**

17 15. In or around 2013, MR. DE CASTRO worked at a company called Alpha Bird. MR.
18 ROWLAND was MR. DE CASTRO'S boss at Alpha Bird, and a mentor mentee relationship was
19 formed and continued when they worked together after MR. ROWLAND rebranded Alpha Bird as
20 Emerge Digital following the botnet scandal, described in point 37 below.

21 16. MR. BRINGAS consulted for Emerge Digital for a couple months in 2013; which is
22 when he met MR. DE CASTRO.

23 17. During which period MR. ROWLAND continued to earn and build trust with MR. DE
24 CASTRO by speaking to him about his successes and sharing confidences.

25 18. And when MR. DE CASTRO was thinking about going out on his own, he reached out to
26 MR. ROWLAND.

27 19. MR. BRINGAS had no prior relationship with MR. ROWLAND.
28

1 20. ADTANGO was founded by MR. DE CASTRO and MR. BRINGAS in February 2014
2 with the goal of bringing programmatic efficiency, data modeling and analytics to advertisers
3 focused on the Hispanic American digital audience.

4 21. MR. DE CASTRO was named Chief Executive Officer, (“CEO”) a position that, for all
5 relevant times in this action, he has never relinquished.

6 22. When MR. DE CASTRO formed ADTANGO, MR. ROWLAND allowed ADTANGO to
7 use LERNA’s office at 607 Market St., San Francisco, as ADTANGO’s corporate headquarters,
8 although ADTANGO operated “virtually” with both MR. DE CASTRO based in Southern
9 California and MR. BRINGAS based in Northern California, then later in Montgomery County,
10 Maryland.

11 23. ADTANGO began to take off almost immediately, growing its monthly gross receipts
12 from five hundred dollars (\$500) to seventy thousand dollars (\$70,000) between February and
13 September 2014.

14 24. While its high growth rate made ADTANGO’s future look promising, online ad sales is a
15 relatively low-margin business with “mismatched” accounts payable and accounts receivable
16 maturity dates – that is, accounts payable were due from vendors before accounts receivable
17 were collected from clients. The result was an anticipated shortfall of capital on hand to reinvest,
18 slowing ADTANGO’s growth curve. Therefore, to continue growing at a high rate, ADTANGO
19 needed to obtain financing, at least in the short term.

20 25. In or around August 2014, MR. DE CASTRO began searching for the right financing
21 solution, when the concept of factoring came up. A factor could provide advance payments on
22 accounts receivable, which would thus provide ADTANGO with the immediate capital it needed
23 to continue growing at its accelerated rate.

24 26. As ADTANGO was engaged in these negotiations, MR. DE CASTRO had a discussion
25 with MR. ROWLAND regarding factoring, as well as other financing options. During one of
26 these conversations, MR. ROWLAND advised MR. DE CASTRO that ADTANGO, due to its
27 being open less than a year and utilizing, what he claimed was, an immature bookkeeping
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1 methodology, would likely have trouble finding any reasonable financing options and that
2 LERNA might be best able to assist.

3 27. Specifically, MR. ROWLAND stated that LERNA had already established a track record
4 of strong revenues for long enough to have a factoring agreement in place and as a result of their
5 excellent financial position, could solve ADTANGO's financing issues (acting as a de facto
6 factor for ADTANGO by advancing payments owed until receivables came in to repay them).

7 28. MR. ROWLAND additionally stated to MR. DE CASTRO that LERNA had the capacity
8 to benefit ADTANGO by providing LERNA with back-end business operations, including vastly
9 improved bookkeeping.

10 29. MR. ROWLAND stated that LERNA was in need of operational, reporting and analytics
11 leadership; particularly for LERNA's AmpDesk platform, its online hub for finance and business
12 operations. MR. ROWLAND was aware that MR. DE CASTRO and MR. BRINGAS had the
13 capability to perform such work in relation to AmpDesk. MR. ROWLAND, therefore, proposed
14 that the parties enter a stock swap or merger.

15 30. MR. DE CASTRO and MR. ROWLAND had previously discussed working together
16 again, and given their relationship and what MR. ROWLAND had told him about LERNA, MR.
17 DE CASTRO was excited about the opportunity.

18 31. In or around September 2014, as MR. DE CASTRO began thinking more seriously about
19 developing a business relationship with LERNA, he began to inquire about LERNA's financial
20 condition and outlook.

21 32. MR. DE CASTRO requested documented financial information as to LERNA, which
22 would support MR. ROWLAND's claims of LERNA's allegedly strong financial position.

23 33. MR. ROWLAND provided scant evidence, but re-iterated that buying into LERNA was a
24 wise and prudent decision because LERNA was on strong financial ground; and MR.
25 ROWLAND did, however, inform MR. DE CASTRO that in July 2014, LERNA had revenues of
26 approximately \$10,000 per day. Those numbers impressed MR. DE CASTRO and MR.
27 BRINGAS.
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1 34. MR. ROWLAND further represented that LERNA was building out vertical markets in
2 fields such as sports and entertainment, and had already made substantial headway.

3 35. After hearing MR. ROWLAND discuss what LERNA's condition and outlook, and its
4 ability to immediately provide both financing/factoring and bookkeeping, MR. DE CASTRO
5 was excited to work with his old boss MR. ROWLAND to grow ADTANGO.

6 36. What MR. DE CASTRO did not know at the time, was that MR. ROWLAND did not
7 intend to help but saw MR. DE CASTRO as a potential mark, seeking access to ADTANGO's
8 books so he could help himself to the money the Company was generating.

9 37. This, in fact, is not the first time MR. ROWLAND has been implicated in a scheme to
10 defraud, although previously he was assumed an innocent bystander. In 2013, MR. ROWLAND
11 was linked to the so-called [botnet scheme](http://www.ft.com/cms/s/0/ab60c728-908f-11e2-a456-00144feabdc0.html#axzz3zmvjqeZ1), which hijacked 120,000 residential PCs in the US to
12 auto-click on paid advertising, defrauding advertisers of millions of dollars a month. See,
13 <http://www.ft.com/cms/s/0/ab60c728-908f-11e2-a456-00144feabdc0.html#axzz3zmvjqeZ1>.

14 38. Later in September 2014, LERNA, through MR. ROWLAND, made a formal proposal,
15 whereby MR. DE CASTRO and MR. BRINGAS would become co-owners of LERNA. In so
16 doing, MR. ROWLAND stated to MR. DE CASTRO and MR. BRINGAS that the deal would be
17 beneficial because, with LERNA's assistance, they would be able to continue growing
18 ADTANGO faster than would otherwise be able to do without financing, and also own a piece of
19 a growing entity (LERNA).

20 39. On or around October 6, 2014, MR. ROWLAND made an offer to exchange shares in
21 LERNA for shares in ADTANGO.

22 40. MR. DE CASTRO and MR. BRINGAS, having considered all the advantages of working
23 with LERNA as represented by MR. ROWLAND, decided to "buy in".

24 41. Neither MR. ROWLAND nor LERNA prepared offering memoranda regarding a
25 proposed sale of its securities.
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1 42. Neither MR. ROWLAND nor LERNA provided relevant financial statements, proforma
2 or otherwise, to MR. DE CASTRO or MR. BRINGAS necessary to properly evaluate the
3 benefits of owning shares in LERNA.

4 43. Neither MR. DE CASTRO or MR. BRINGAS are accredited or experienced investors,
5 and thus did not fully understand the type of information they needed to fully evaluate the
6 investment.

7 44. MR. DE CASTRO and MR. BRINGAS thus remained unaware of the true financial
8 condition of LERNA, relying solely on the claims of MR. ROWLAND that LERNA stood in
9 excellent financial position, capable of providing short-term financing / factoring as to
10 ADTANGO's receivables such that ADTANGO could continue its fast-paced growth.

11 45. MR. ROWLAND then drafted and provided MR. DE CASTRO and MR. BRINGAS a
12 term sheet, outlining a proposal whereby LERNA would acquire ADTANGO in exchange for
13 certain consultant agreements that included both compensation and substantial stock option
14 awards to MR. DE CASTRO and MR. BRINGAS, who were offered 600,000 and 300,000
15 shares, respectively; with half to be earned based on time working with LERNA and half based
16 on profitability of ADTANGO. Specifically, the term sheet stated:

- 17 a. In the first month where ADTANGO CM exceeds \$50,000, one third of
18 options shall vest.
19 b. In the first month where ADTANGO CM exceeds \$150,000, an additional
20 one third of options shall vest.
21 c. In the first month where ADTANGO CM exceeds \$300,000, the option
22 shall be one hundred percent vested.
23

24 46. The term sheet also stated, "Mark DE CASTRO shall be CEO of ADTANGO. So long
25 as ADTANGO's gross margin at least equals its operating costs, DE CASTRO shall be solely
26 responsible for running the day-to-day ADTANGO operations, except that any changes in any
27 compensation for Mr. DE CASTRO or Mr. BRINGAS shall require Board of Director approval."
28

1 47. The offer or sale of stock options is, generally, considered to be the offer or sale of
2 securities as a matter of California and Federal law.

3 48. NEITHER MR. DE CASTRO nor MR. BRINGAS were offered management or control
4 rights of LERNA.

5 49. MR. DE CASTRO AND MR. BRINGAS believed they were being offered the
6 opportunity to own a substantial piece of an already successful company and the opportunity to
7 fully exploit ADTANGO's potential, which would even further increase the value of the LERNA
8 stock they were being offered.

9 50. 186. MR. DE CASTRO and MR. BRINGAS agreed to take below market salaries from
10 ADTANGO and sell some or all of their interest in ADTANGO, a company that at the time
11 could be valued at over one million dollars and \$10,000,000 as of July 2015, for an opportunity
12 to obtain more valuable equity in LERNA.

13 51. Mr. ROWLAND, despite promising to provide ADTANGO with short term financing in
14 order to help it grown, and provide Mr. DE CASTRO and Mr. BRINGAS with valuable shares in
15 LERNA, really had no intention of actually benefiting Plaintiffs; instead planning on using
16 ADTANGO solely to benefit himself by obtaining discounted services from Plaintiffs and
17 ripping the Company off for what is believed to be more than \$400,000.

18 52. MR. DE CASTRO, on the one hand, and LERNA, on the other hand, had signed the term
19 sheet by October 9, 2014.

20 53. MR. ROWLAND then drafted and offered a long form agreement (the "SPA"). See
21 Exhibit 1.

22 54. The document drafted by MR. ROWLAND is so rife with errors, inconsistencies, and
23 altogether missing clauses, as to render its comprehension impossible at points and difficult
24 throughout.

25 55. MR. DE CASTRO and MR. BRINGAS, however, not being represented by counsel,
26 were not fully aware of all the issues and inconsistencies with the SPA at the time; nor were they
27 sophisticated enough to request and or review additional documents documents deemed
28

1 necessary as a matter of law to buy and sell securities (including securities in the form of service
2 compensation stock options).

3 56. MR. DE CASTRO, MR. BRINGAS, and the two other parties signed the SPA but,
4 although there was a signature space for LERNA, PLAINTIFFS never received a countersigned
5 agreement from LERNA.

6 57. There were several other problems with the SPA:

- 7 a. LERNA, in fact, did not have any stock at all, but member interest that
8 had in no way, shape or form been divided into classes or shares of stock.
- 9 b. Neither LERNA nor MR. ROWLAND created or issued any stock
10 certificates.
- 11 c. No stock option plan existed or was created at any relevant time in this
12 action.

13 58. MR. ROWLAND did not disclose these (a, b, or c) important facts to PLAINTIFFS.

14 59. For reasons to be established, neither MR. ROWLAND nor LERNA registered the sale of
15 these securities as required under California law.

16 60. Despite its many inconsistencies, some things, however, are clear in the SPA:

17 61. The shares in LERNA offered to MR. DE CASTRO and MR. BRINGAS are specifically
18 identified as "Consideration Shares" in Section 5.2 and as part of the "Purchase Price" in Section
19 2.2 (b).

20 62. Neither MR. DE CASTRO nor MR. BRINGAS were to become managers of LERNA.

21 63. The SPA, in sections 2.2(b), 2.3 and 2.4, states that LERNA must deliver stock option
22 agreements by November 15, 2014 in order to complete the transaction and to make the SPA
23 binding.

24 64. According to the SPA, MR. DE CASTRO and MR. BRINGAS had (and/or have) the
25 right to terminate the agreement if LERNA failed to deliver the stock option agreements or, "in
26 the event any representation or warranty with respect to the Purchaser is determined to be false in
27 any material respect..."
28

1 65. At no point did LERNA create a stock option plan or attempt to deliver stock options
2 agreements to MR. DE CASTRO and MR. BRINGAS. Similarly, ADTANGO never delivered
3 stock certificates.

4 66. Additionally, at this time, it would be impossible for LERNA to offer and MR. DE
5 CASTRO and/or MR. BRINGAS to accept, stock options, as the terms of the stock option plan
6 would have to be negotiated, and the stock options' value – including but not limited to its the
7 relative proportion of the number of options to the whole (e.g. are 300,000 share equal to 20% or
8 2%) – would have to be negotiated in a situation where there is no longer trust.

9 67. For reasons of lack of signature by LERNA, lack of occurrence of closing conditions of
10 the SPA, and a number of missing provisions and key terms that led to a shocking amount of
11 ambiguity in the SPA, it never closed and was never enforceable against the parties.

12 68. In fact, MR. ROWLAND, in furtherance of his scheme to defraud, acknowledged to Mr.
13 DE CASTRO that the SPA was not completed or finalized but, convinced MR. DE CASTRO to
14 “keep things loose” and table further discussions and negotiations so that MR. DE CASTRO and
15 MR. BRINGAS could focus on growing ADTANGO.

16 69. No shares were formally transferred (no certificates traded or signed) and ADTANGO
17 did not elect any member of LERNA to its Board.

18 70. The service-for-service exchange was not materially affected by the SPA's lack of
19 closing; the PARTIES agreed on performance whereby LERNA would handle bookkeeping and
20 provide short-term financing so that that ADTANGO would not fall behind on its accounts
21 payable in exchange for repayment when receivables came in and Mr. BRINGAS would dedicate
22 his time, with the help of MR. DE CASTRO, to updating the AmpDesk platform.

23 71. MR. BRINGAS has been working in the Hispanic digital marketing field since 2005 and,
24 having developed a thorough working knowledge of multiple marketing platforms as well as
25 many relationships in the market, made him a very valuable contributor.

26 72. He is also a certified translator (English to Spanish) by the American Translators
27 Association.
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1 73. The market rate in Silicon Valley for his services would have been around \$10,000 a
2 month plus bonuses and stock options.

3 74. At all relevant times in this action, there were two ADTANGO bank accounts: Union
4 Bank and Bridge Bank. MR. DE CASTRO and MR. BRINGAS were the principals on the
5 Union Bank account, and MR. DE CASTRO was the principal on the Bridge Bank account.
6 PLAINTIFFS authorized Ericksson Abad, a bookkeeper at LERNA and Ed Roffman, CFO at
7 LERNA access to act as signers on the accounts to handle billing and invoicing.

8 75. Meanwhile, as stated above, pursuant to informal discussions and agreement, MR.
9 BRINGAS continued work on AmpDesk so that it could properly serve as a hub for finance and
10 business operations for LERNA.

11 76. Over the next few months MR. DE CASTRO and MR. BRINGAS expended significant
12 time and energy while performing this update in a competent manner at all relevant times in this
13 action; the previous team had not been up to the task but by April, AmpDesk was vastly
14 improved and functional. MR. DE CASTRO and MR. BRINGAS had expended tremendous
15 effort on AmpDesk, to the point of being forced to divert significant time and energy away from
16 ADTANGO.

17 77. MR. BRINGAS spent the primary portion of his time on the AmpDesk platform between
18 around October 2014 and April 2015.

19 78. In or around late April 2015, MR. ROWNLAND and MR. DE CASTRO began to discuss
20 parting ways.

21 79. PLAINTIFFS had complained that accounts payable were not being met as timely as they
22 expected but, not knowing the extent of the problem, it was Mr. ROWLAND who proposed the
23 parting. PLAINTIFFS now believe, MR. ROWLAND made this proposal believing he had
24 gotten a substantial (unearned) benefit— a discounted update of the AmpDesk platform. There is
25 also reason to believe Mr. ROWLAND had already begun syphoning money from ADTANGO,
26 which will be determined when the books and records kept by third parties are turned over.
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1 80. MR. DE CASTRO, not knowing of Mr. ROWLAND's scheme to defraud, believed the
2 factoring promised would be more important at that time in 2015 than ever before, and persuaded
3 Mr. ROWLAND to continue their relationship at least through the summer after disclosing that
4 ADTANGO was expecting even greater income over the following four months.

5 81. It is now believed when Mr. ROWLAND promised to "continue" the relationship he did
6 not intend to provide any of valuable services negotiated for but, instead, to use his control over
7 ADTANGO's bookkeeping and potential confusion re the status of the SPA, to take all or most
8 of ADTANGO's receivables for himself and not pay on the accounts receivable, leaving both
9 ADTANGO and LERNA with serious liabilities but he and Mr. Becerra with their pockets full.

10 82. The Parties agreed to keep their relationship going and then terminate in September 2015,
11 releasing any claims of ownership towards the others' companies.

12 83. For the next several months, DE CASTRO's predictions about ADTANGO proved true,
13 as the Company generated hundreds of thousands of dollars of revenue, substantially more than
14 their costs (including salaries), which is also the case for the relevant time period of October
15 2014 to September 2015.

16 84. Around this same time, PLAINTIFFS became very concerned that LERNA was not
17 meeting its promise of factoring ADTANGO's receivables, as LERNA was not paying
18 ADTANGO's bills to vendors nor collecting effectively. ADTANGO had receive notices from
19 major suppliers, the first of which was Facebook, that payments were severely overdue; but
20 during these months, it would be a recurrent theme.

21 85. Meanwhile, PLAINTIFFS also became more concerned about the business that LERNA
22 was engaged in. LERNA was strictly buying from aggregators and selling into other aggregators,
23 a no-value add type of activity, which while legal, is frowned upon and attracts the ire of the
24 legitimate digital advertising industry. Further, Lerna had not fully develop any of the vertical
25 networks, as promised in September 2014.
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1 86. Moreover, as ADTANGO was AmpDesk's largest demand partner for months and
2 ADTANGO were ADTANGO's biggest supplier. MR. DE CASTRO and MR. BRINGAS began
3 to consider that this relationship could hurt PLAINTIFFS' reputation as well.

4 87. Additionally, as MR. DE CASTRO and MR. BRINGAS were working many hours per
5 day on AmpDesk, they had an up-close view of LERNA's sales numbers, which were
6 consistently abysmal. It became clear that the July 2014 numbers provided by MR. ROWLAND
7 to show the purported strength of LERNA were either a complete anomaly or total fabrication.

8 88. MR. DE CASTRO and MR. BRINGAS had expended tremendous effort on developing
9 AmpDesk, and were very unhappy with how LERNA's performance of promised factoring.

10 89. MR. DE CASTRO was also dismayed in regards to the manner that LERNA had been
11 managing ADTANGO's books. They were aghast at LERNA's lack of communication of
12 payment with ADTANGO vendors and significant delays in collecting from ADTANGO clients.

13 90. In or around September 2015, MR. DE CASTRO met with MR. ROWLAND to finalize
14 the termination and unwinding. MR. ROWLAND, however, reneged on his earlier agreement,
15 stating that MR. DE CASTRO could leave but that LERNA would not terminate the business
16 relationship between the parties.

17 91. MR. ROWLAND claimed that LERNA was unhappy with the growth of ADTANGO's
18 Hispanic business, despite the fact that ADTANGO has, at all times relevant in this action,
19 sufficient revenues to maintain profitability on an annual basis as can be seen on in the Adtango
20 operational financials kept independently by Mark De Castro. And MR. DE CASTRO strongly
21 suspects that LERNA was taking money from ADTANGO to pay itself, a suspicion which is
22 strongly supported by ADTANGO's financial records as kept by LERNA.

23 92. It is now believed Mr. ROWLAND's claims about being "unhappy" with ADTANGO's
24 growth were a ruse to attempt to usurp the CEO role per the void SPA.

25 93. What MR. DE CASTRO did not know at the time, but has since discovered, is that
26 during the same period in September MR. ROWLAND was simultaneously entering into an
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1 unauthorized agreement with a company called Marble Bridge (“MB”) to factor ADTANGO’s
2 receivables (“MB FACTORING AGREEMENT”).

3 94. PLAINTIFFS have just recently discovered documentation showing Mr. ROWLAND
4 falsely claiming to be CEO of ADTANGO when entering this factoring agreement, despite the
5 fact there was absolutely no point prior where MR. ROWLAND had ever expressed any
6 statement that he was CEO of ADTANGO or had the right to replace MR. DE CASTRO as CEO
7 of ADTANGO. Such impersonation occurred simultaneously at the time MR. ROWLAND was
8 communicating with MR. DE CASTRO, acknowledging that MR. DE CASTRO was CEO.

9 95. MR. ROWLAND was never elected to the ADTANGO board, nor did he take any other
10 measure, that would enable him to legitimately represent himself as CEO of ADTANGO.
11 Instead, he flatly misrepresented his capacity regarding same.

12 96. LERNA has, since at least March 2015, been obtaining *direct cash advances* against
13 ADTANGO’s accounts receivable LERNA but failing to provide the promised short term
14 financing (e.g. factoring) for ADTANGO, such that ADTANGO would not fall behind on
15 payments to vendors¹. DEFENDANTS negotiated a factoring agreement with Lender’s
16 Financial, whereby LERNA received advances on ADTANGO receivables, which
17 DEFENDANTS did not use to benefit ADTANGO or PLAINTIFFS, instead, simply keeping the
18 monies for themselves.

19 97. After investigation, including review of financials supplied by PLAINTIFFS, it is now
20 clear to PLAINTIFFS that DEFENDANTS were taking ADTANGO receivables for themselves
21 instead of paying ADTANGO bills, in amounts of over \$200,000 to Facebook alone.
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25 ¹ The financial records, including profit and loss statements, will show that during the course of LERNA and
26 ADTANGO’s relationship, ADTANGO’s accounts receivable exceeded its accounts payable and operating costs – they were
27 profitable. The issue was only that payments to vendors were often due months prior the income generated from the vendors was
28 received. Which is where LERNA was supposed to come in and help.

1 98. PLAINTIFFS are also informed and believed that MR. ROWLAND and MR. BECERRA
2 were using the advances (diverted ADTANGO revenues) to pay themselves enormous and
3 unjustified salaries without consent from PLAINTIFFS. (PLAINTIFFS can see no justification
4 for paying huge salaries to LERNA employees directly from (advances on) ADTANGO
5 receivables while simultaneously not paying ADTANGO vendors and publishers necessary for
6 the functioning of the underlying business.)

7 99. MR. DE CASTRO and MR. BRINGAS, conversely, had at all relevant times in this
8 action paid themselves well below market salary for a CEO and CTO of a profitable advertising
9 company, \$8,000 and \$7,700 per month, respectively, based on agreement that doing so would
10 allow equity in ADTANGO and or LERNA to, in the long run, make up for the shortfall and
11 make their business relationship with LERNA worthwhile.

12 100. As money earmarked for ADTANGO vendors never actually made it to the vendors, and
13 ADTANGO grew more and more delinquent, MR. DE CASTRO and MR. BRINGAS's
14 professional reputations were becoming increasingly tarnished.

15 101. It became evident that the LERNA relationship was likely going to result in a complete
16 decimation of ADTANGO's business, as its key accounts, including without limitation Facebook
17 and AOL, were being shut off as a result of non- payment and unresponsiveness; and, starting in
18 late November 2015, ADTANGO was very close to being unable to continue business
19 operations.

20 102. MR. DE CASTRO requested ADTANGO financial records, including, Cash Flow
21 statements, updated and detailed profit and loss statements, as well as Accounts Receivable and
22 Accounts Payable aging to diagnose the problem.

23 103. Certain profit and loss statements received by MR. DE CASTRO reveal a pattern of
24 shoddy record keeping and point to an obvious "skimming" of ADTANGO revenues: Such
25 statements, received by MR. DE CASTRO at various points, reveal varying profit and loss
26 numbers for the *same* months across different statements, i.e. they differed from each other for
27
28

1 the same time period! All of the statements differed not only from each other, but also from the
2 numbers that MR. DE CASTRO also kept,

3 104. After numerous requests, Mr. DE CASTRO received copies and saw that the latest profit
4 and loss statements had been dramatically revised downward and the outstanding overdue
5 liabilities was over \$500,000.

6 105. MR. DE CASTRO began to grill MR. ROWLAND and the finance team as to what was
7 going on until matters reached a crescendo during the week of the December 7, 2015.

8 106. It had become clear to MR. DE CASTRO that there was at a minimum, gross
9 mishandling of ADTANGO's books and finance – in addition to a high probability of fraudulent
10 activity by LERNA.

11 107. Between on or around December 9 and on or around December 11, 2015, PLAINTIFFS,
12 the majority shareholders in ADTANGO, met and discussed extensively about how to proceed.

13 108. MR. DE CASTRO and MR. BRINGAS sought legal advice on December 11, 2015 for
14 the formal termination of ADTANGO's business arrangement with LERNA. To do so, despite
15 the overwhelming evidence that the SPA was not the operative agreement between the parties,
16 but because of ROWLAND's apparent claims to the contrary and in an abundance of caution,
17 ADTANGO used termination procedures as provided in the SPA.

18 109. On or around December 12, 2015, given the legal counsel it had received, ADTANGO
19 voted to terminate its relationship with LERNA and – to remove any doubt – the SPA.
20 ADTANGO issued notice to LERNA accordingly.

21 110. ADTANGO provided notice on or around December 12, 2015 through telephone
22 transmission and by courier on or around December 14, 2015. ADTANGO held an additional
23 shareholder meeting on or around December 14, 2015, which detailed the events and formulating
24 a plan to pay ADTANGO vendors, and get the company back on solid financial footing.

25 111. ADTANGO was subsequently informed by LERNA, through legal counsel, that it
26 refused to acknowledge ADTANGO's termination of their business relationship and specifically,
27 the SPA.
28

1 112. ADTANGO made a demand to LERNA through counsel to make immediate payment to
2 ADTANGO vendors of amounts outstanding and received some assurances that this would be
3 done. Communication, however, lulled during the holidays until after the New Year.

4 113. During this time, ADTANGO focused on reaching out to vendors to explain the delay
5 and payment and attempted to save the business, with some success.

6 114. Meanwhile, LERNA began to actively fight the termination by attempting to gain control
7 of ADTANGO by any means possible.

8 115. Starting in or around December 2015, DEFENDANTS began purporting to represent
9 ADTANGO using newly created email addresses @ADTANGO.co. Plaintiff is informed and
10 believes that at the time of the drafting of this Complaint, such use continues to this day.

11 116. Further, on or around January 8, 2016, DEFENDANTS took matters into their own hands
12 through the illicit self-help measure of hacking into and obtaining access to MR. DE CASTRO's
13 personal GoDaddy account, and transferred ownership of ADTANGO.com and
14 ADTANGOMedia.com into the control of LERNA. This was done at the direction of
15 DEFENDANTS by a different company, called LERNA Labs LLC, and persisted until
16 ADTANGO was able to successfully petition GoDaddy to have control of the domain returned
17 on January 28, 2016.

18 117. This resulted in LERNA taking over control of the ADTANGO.com domain name. For
19 one week, from in or around January 21, 2016 to January 28, 2016, DEFENDANTS set up the
20 ADTANGO.com website to be diverted to its own AmpDesk website. This removed any and all
21 doubt as to who was behind the hacking.

22 118. Meanwhile, PLAINTIFFS are informed and believe that LERNA informed ADTANGO
23 vendors that MR. DE CASTRO had been fired from ADTANGO, and disparaged him to the
24 same vendors.

25 119. DEFENDANTS also, in mid December, blocked PLAINTIFFS from an account called
26 "The Trade Desk", which caused major issues with campaigns that were being delivered, and
27 thus caused a further disruption in ADTANGO's business.
28

1 120. At all times relevant in this action, it was clear that the SPA had never closed, and was
2 not enforceable and that ADTANGO and LERNA remained independent companies.

3 121. MR. DE CASTRO retained operational control as CEO at all relevant times in this action.

4 122. MR. DE CASTRO, and not anyone at LERNA, decided if and when to change
5 compensation to ADTANGO employees, including without limitation Charles Pitzer and MR.
6 BRINGAS. MR. DE CASTRO informed MR. ROWLAND of his decisions in this regard.

7 123. At all times relevant in this action, LERNA charged, and ADTANGO paid for,
8 administrative services and office space.

9 124. At this time, DEFENDANTS, have all but destroyed ADTANGO, causing numerous
10 business partners to cancel contracts due to non-payment, while enriching themselves personally,
11 but, for reasons that can only be understood as the continuance of this scheme to defraud, have
12 refused to allow Mr. DE CASTRO and Mr. BRINGAS to take back the business.

13 125. Furthermore, DEFENDANTS, in continuing attempt to avoid providing any value to
14 Plaintiffs, have opened a new company competing with ADTANGO, transferring resources to
15 this new entity.

16 126. Mr. Becerra is apparently CEO of the new entity.

17
18 **FIRST CLAIM FOR RELIEF**
19 **For an Accounting**
20 **(Against All Defendants)**

21 127. Plaintiffs reallege and incorporate by reference the information and allegations set forth
22 above in paragraphs 1- 126 .

23 128. As a result of the aforementioned agreement by DEFENDANTS to factor ADTANGO's
24 receivables, defendant LERNA has since received money from ADTANGO customers, a portion
25 of which is due to ADTANGO from defendant, as previously alleged.

26 129. The amount of money due from defendant LERNA to plaintiff ADTANGO is unknown
27 to plaintiff ADTANGO and cannot be ascertained without an accounting of the accounts
28 receivable received - receipts and disbursements of the aforementioned transactions. Plaintiff

1 ADTANGO is informed and believes and thereon alleges that the amount due to plaintiff
2 ADTANGO exceeds \$200,000.

3 130. Plaintiff ADTANGO has demanded an accounting of the aforementioned transactions
4 from defendant LERNA and payment of the amount found due but defendant has failed and
5 refused, and continues to fail and refuse, to render such an accounting and to pay such sum.

6 131. WHEREFORE, Plaintiff ADTANGO seeks judgment against defendants for a full
7 accounting, to be provided within 30 days of the entry of judgment, and such other relief as the
8 Court deems fair and equitable.

9
10 **SECOND CLAIM FOR RELIEF**

11 **Violation of the Securities Act of 1933 and the Securities Exchange Act of 1934**
12 **(As to all Defendants)**

13 132. PLAINTIFFS, hereby incorporate paragraphs 1- 131 as set forth herein.

14 133. Securities sold in the United States that are not registered with the Securities and Exchange
15 Commission ("SEC") under Regulation D must conform to the provisions of SEC Regulation D
16 ("Reg. "D").

17 134. Reg. D Rule 502 states that unregistered securities must be preceded by disclosures that
18 approximate those which would be disclosed in a formal registration.

19 135. Prior to entering into the SPA (which constitutes a sale of securities as a matter of law), MR.
20 ROWLAND disseminated or approved the false statements specified above, including but not limited
21 to: i) that LERNA had stock with a defined value; ii) that LERNA had a stock option plan; iii) that
22 CEO Alex ROWLAND had a plan and the intention to benefit shareholders of LERNA by growing
23 ADTANGO; and iv) that LERNA had the ability and willingness to factor ADTANGO receivables.

24 136. Mr. ROWLAND made these statements, which he knew or deliberately disregarded were
25 misleading in that they contained misrepresentations and failed to disclose material facts necessary in
26 order to make the statements made, in light of the circumstances under which they were made, not
27 misleading.

28 137. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- a. Employed devices, schemes and artifices to defraud;
- b. Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which there were made, not misleading; or
- c. Engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiffs in connection with their purchases of LERNA securities.

138. The false, deceptive, and misleading statements and omissions were made with knowledge that Plaintiffs would never receive any profits from the Company.

139. The aforementioned acts were undertaken in violation of Section 12(a) of the Securities Act of 1933, section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 adopted pursuant thereto.

140. Plaintiffs have suffered damages in that, in reliance on the statements and omissions by DEFENDANTS, they paid an artificially inflated price for LERNA securities. PLAINTIFFS would not have purchased LERNA securities at the price they paid, or at all, if they had been aware that the sale price had been artificially and falsely inflated by DEFENDANTS' misleading statements.

THIRD CLAIM FOR RELIEF
Breach of Fiduciary Duty
(As to all Defendants)

141. Plaintiffs, hereby incorporate paragraphs 1 through 140 as though set forth herein.

142. The agreements entered into by the Parties created a fiduciary that required, without limitation, the duties of care, loyalty, and full disclosure of all material facts that would affect PLAINTIFFS' decision to enter into and or continue a contractual relationship with LERNA and MR. ROWLAND.

143. At all times relevant herein, LERNA and MR. ROWLAND breached their fiduciary duty to Plaintiffs by siphoning money from ADTANGO to their personal benefit, destroying ADTANGO business relationships by failing to pay accounts owned, and by failing to distribute profits as earned.

1 144. As a result of the aforementioned breaches of fiduciary duty, PLAINTIFFS have suffered and
2 continue to suffer damages in an amount to be established at trial.

3 **FOURTH CLAIM FOR RELIEF**
4 **Misrepresentations or Omissions of Material Facts**
5 **in Violation of California Corporations Code Section 25401**
6 **(As to Defendants LERNA and ROWLAND)**

7 145. PLAINTIFFS reallege and incorporate by reference paragraphs 1 through 144 of this
8 Complaint as though fully set forth herein.

9 146. California Corporations Code section 25401 provides as follows:

10 It is unlawful for any person to offer or sell a security in this state or buy or offer
11 to buy a security in this state by means of any written or oral communication
12 which includes an untrue statement of material fact or omits to state a material
13 fact necessary in order to make the statements made, in light of the circumstances
14 under which they were made, not misleading.

15 147. Commencing at least as early as October 2014, LERNA and ROWLAND, offered and
16 sold, securities in issuer transactions in the state of California.

17 148. The investments offered and sold by LERNA and ROWLAND, are “securities” within
18 the meaning of California Corporations Code section 25019. The securities included, but are not
19 limited to, limited liability company interests in LERNA LLC.

20 149. The sale referred to herein, were “issuer transactions” within the meaning of sections
21 25010 and 25011 of the California Corporations Code.

22 150. The DEFENDANTS “offered and sold” the securities referred to herein in the state of
23 California within the meaning of California Corporations Code sections 25008 and 25017.

24 151. In offering, selling, and purchasing the securities referred to herein, DEFENDANTS
25 made, untrue statements and or misrepresentations of material facts to DE CASTRO and
26 BRINGAS. The misrepresentations of material facts included, without necessarily being limited
27 to, the following:

- 28 a. Factoring: Defendants stated that it had factoring in place and could
provide ADTANGO with factoring, paying off ADTANGO’s accounts
payable before they came due and before receivables came in;

- b. LERNA's Financial Condition: Defendants stated that not only was LERNA in good financial condition and capable of helping ADTANGO with short-term financing necessary for its growth, but that LERNA was making substantial profits, with a value of more than ten times ADTANGO (based on stock sale);
- c. Shares and Stock Option Plan: Defendants stated that LERNA, despite being an LLC, was able to grant stock awards and stock options (when it could not).

152. In offering, selling, and purchasing the securities referred herein, DEFENDANTS also omitted to state, material facts to DE CASTRO and BRINGAS. The omissions included, but without necessarily being limited to, the following:

153. LERNA and MR. ROWLAND omitted the material fact that LERNA had not divided its LLC membership interests into stock.

154. LERNA and MR. ROWLAND omitted the material fact that 300,000 shares of LERNA had no defined meaning or definitive value.

155. LERNA and MR. ROWLAND omitted the material fact that it had not created a Stock Option Plan and was thus, at that time, unable to actually provide the promised stock options.

156. They also omitted that Mr. ROWLAND, CEO of LERNA, had no intention or plan to increase the value of the LERNA stock, merely intending to line his pockets with ADTANGO revenue.

157. The misstatements and omissions referred to herein were of "material facts" within the meaning of California Corporations Code section 25401.

158. Mr. ROWLAND made untrue statements and or omitted to disclose statements of material facts in connection with the offer and sale of securities in violation of California Corporations Code 25401.

159. PLAINTIFFS were significantly damages in that the value of their ADTANGO shares have been substantially undermined by MR. ROWLAND's actions and misinformation, with the

1 Company now being on the edge of bankruptcy, although the full damages are to be proven at
2 trial.

3 **FIFTH CLAIM FOR RELIEF**
4 **For Money Had and Received**
5 **(As to All Defendants)**

6 160. Plaintiffs, hereby incorporate paragraphs 1 through 159as though set forth herein.

7 161. Within the past two years, DEFENDANTS, and each of them, became indebted to
8 PLAINTIFFS in an amount greater than \$200,000, for money had and received for the use and
9 benefit of PLAINTIFFS.

10 162. No part of such sum has been paid, although demand has been made and there is now due,
11 owing, and unpaid, the sum of greater than \$200,000 with interest at the rate of 10% per annum from
12 October 15, 2014 and thereafter.

13 WHEREFORE, Plaintiffs asks that this Court issue a judgment for the damages suffered in the
14 amount of \$5,000,000, inclusive of statutory interest, as well as legal fees and costs.

15 **SIXTH CLAIM FOR RELIEF**
16 **For Fraud**
17 **(As to Defendant Alex ROWLAND)**

18 163. PLAINTIFFS refer to and incorporate herein by this reference, all of the allegations
19 contained in paragraphs 1- 162 of this Complaint.

20 164. The facts show that MR. ROWLAND has been engaged in a ongoing scheme to defraud
21 Plaintiffs since at least October 2014 to the present.

22 165. PLAINTIFFS placed great trust in MR. ROWLAND at all times relevant in this matter,
23 including but not limited to, the conversations that took place regarding LERNA's ability to
24 provide factoring to ADTANGO.

25 166. On multiple occasions, including on October 9, 2014 and October 15, 2014, by telephone
26 and email, MR. ROWLAND represented to MR. DE CASTRO that LERNA had the ability and
27 willingness to assist ADTANGO with its short-term financing so that ADTANGO could keep
28 current with its accounts payable without slowing its outstanding growth rate, and that if

1 ADTANGO signed the SPA, LERNA would factor ADTANGO receivables to allow for its
2 continued growth.

3 167. MR. ROWLAND further made statements on these days, including those in the term
4 sheet, that the value of LERNA stock options provided to Plaintiffs would increase through the
5 negotiated relationship; that LERNA would support the growth and success of ADTANGO.

6 168. At the time of these promises, however, Mr. ROWLAND knew that no stock or stock
7 options in LERNA existed, and even if they did, they had no defined value; and further, that he
8 had no intention of growing ADTANGO.

9 169. Mr. ROWLAND made these false statements intending that they be relied upon, first for
10 the purpose of obtaining essentially free CTO help from Mr. BRINGAS and MR. DE CASTRO
11 updating LERNA's AmpDesk platform, and also for the purpose of personally enriching himself.

12 170. MR. DE CASTRO, while not in direct contact with the Ampdesk team until January 2015
13 he was overseeing and discussing Operations with MR. BRINGAS on a regular basis. And,
14 starting January 2015, he commanded Operations.

15 171. The representation by MR. ROWLAND that LERNA was prepared to address
16 ADTANGO's short-term financing needs at the time the SPA was signed on October
17 15, 2014 was patently false.

18 172. In fact, almost immediately thereafter, LERNA soon fell dramatically behind on all
19 ADTANGO's accounts payable, and actually diverting accounts receivable into its personal
20 coffers, including and especially through the factoring agreement of September 2015.

21 173. This is despite the fact that operational financials kept independently by CEO Mark De
22 Castro show ADTANGO was solidly on track for a profitable for 2016 with only a few months
23 of small cash-flow shortfalls (which should have been addressed with the promised short-term
24 financing).

25 174. Although it appears clear that Mr. ROWLAND actually had no intention of providing the
26 valuable services promised, MR. ROWLAND provided a misleadingly glowing picture to
27
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1 PLAINTIFFS of LERNA's financial state for the purpose of gaining services and access to
2 ADTANGO bank accounts.

3 175. MR. ROWLAND, as CEO of LERNA, knew that LERNA was not as strong financially
4 as he had represented, and therefore not able to enough to provide short-term financing
5 (factoring) to ADTANGO, but chose to exaggerate LERNA's ability in order to induce
6 PLANTIFFS to support and turn control over its funds over to LERNA.

7 176. After gaining control of such funds, LERNA was free to, and in fact did, divert accounts
8 receivable into its personal coffers, including and especially through the factoring agreements of
9 March 2015 and September 2015.

10 177. MR. ROWLAND knew that PLAINTIFFS were concerned about accounts payable
11 becoming due before accounts receivable were collected, and that PLAINTIFFS sought short-
12 term financing for ADTANGO; and was aware that this was the very basis of the PARTIES'
13 initial discussions for collaboration and subsequent negotiations leading to the PLAINTIFFS
14 signing the SPA.

15 178. MR. ROWLAND continued this fraud when in November 2014, MR. DE CASTRO
16 followed up with him regarding when PLAINTIFFS could expect to receive their shares in
17 LERNA and Mr. ROWLAND stated that it was better to keep the arrangement "loose" and wait
18 on closing so the Parties could be assured the deal was good for both.

19 179. Despite acknowledging to Mr. DE CASTRO that the SPA was not completed or finalized
20 but, in furtherance of his scheme to defraud, Mr. ROWLAND convinced DE CASTRO to table
21 further discussions and negotiations so that MR. DE CASTRO and MR. BRINGAS could focus
22 on growing ADTANGO.

23 180. Mr. ROWLAND continued to perpetrate this scheme when in or around March 2015 he
24 entered into a factoring agreement with Lender's Financial, whereby LERNA would receive
25 advance payments on all ADTANGO revenue, while at the same time refraining from paying
26 ADTANGO partners, such as Facebook Live Rail, which were owed more than \$10,000 for
27 every month of service.
28

1 181. Mr. ROWLAND continued to lie and perpetrate the scheme when in on or around April
2 2015 he agreed with Mr. Castro to terminate the arrangements with Plaintiffs, releasing all
3 claims against ADTANGO by end of September 2015.

4 182. Mr. ROWLAND made these promises without any intention to provide the financing
5 central to Plaintiffs concerns but merely so he could continue to take revenue from ADTANGO
6 and place it in his own pockets instead of paying ADTANGO debts as promised, including but
7 not limited to entering into that certain MB Factoring agreement, whereby he claimed to be CEO
8 of ADTANGO.

9 183. Mr. ROWLAND also apparently had no intention to honor his agreement to release
10 ADTANGO back to Plaintiffs, as stated above. He has also continued to pocket revenues from
11 ADTANGO while not paying off debts. He has since refused to honor DE CASTRO's
12 termination of the SPA and other business with LERNA and himself.

13 184. Mr. ROWLAND did all of this despite knowing he had no legitimate claim to ownership
14 of ADTANGO or the position of CEO. Even the invalid SPA states that Mr. De CASTRO may
15 not be removed as CEO unless the company's costs exceed revenues, which was not the case, as
16 ADTANGO has, at all times relevant in this action, sufficient revenues to maintain profitability
17 on an annual basis as can be seen on in the operational financials kept independently by Mark De
18 Castro.

19 185. Mr. ROWLAND never attempted any formal procedure whereby he would properly
20 obtain control of ADTANGO – either through the transfer of shares (which has not occurred) or
21 his appointment as CEO.

22 186. Documentation has recently been discovered showing that following Mr. DE CASTRO's
23 noticed termination of the SPA in December 2015, ADTANGO issued a notice terminating Mr.
24 DE CASTRO and Mr. BRINGAS. Also following the DE CASTRO notice, Mr. ROWLAND
25 caused to be created an official election of himself to the sole director of Board of ADTANGO
26 and appointment of Becerra as CEO.
27
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1 187. This was done both after the signing of the MB factoring agreement by ROWLAND as
2 CEO, despite the fact that shares of ADTANGO had not been formally transferred, *and* in
3 contravention of the BYLAWS of ADTANGO, which require certain procedures for Board
4 changes, and at least three members.

5 188. PLAINTIFFS were harmed by the LERNA's lack of financing ability in the months
6 subsequent to signing of the SPA and up to the date of the drafting of this Complaint.

7 189. To the shock of PLAINTIFFS, LERNA provided no financing whatsoever, and allowed
8 accounts payable to reach unacceptably high levels.

9 190. In practical terms, this has meant that LERNA has not managed ADTANGO's accounts
10 payable or receivable, and thus has not paid ADTANGO vendors ADTANGO.

11 191. This in turn has caused significant harm to the reputation to ADTANGO and to
12 individual PLAINTIFFS, the individuals who founded ADTANGO, who currently operate
13 ADTANGO, and who must ultimately answer to their peers and business contacts in the digital
14 advertising industry.

15 192. Also, the ADTANGO's accounts receivable, totaling at least \$200,000 but likely upwards
16 of \$400,000, are currently in the possession and control of LERNA.

17 193. These monies were received by numerous contracts entered into by ADTANGO and paid
18 as scheduled, in amounts to be shown at trial.

19 194. But for the MR. ROWLAND's many misrepresentations, ADTANGO would have never
20 allowed LERNA to gain control of these funds.

21 195. PLAINTIFFS' reliance on MR. ROWLAND's representation regarding LERNA's
22 financing capabilities was a substantial factor in causing PLAINTIFFS' harm because without
23 this representation, Plaintiff would have never signed the SPA.

24 196. The SPA gave LERNA control over ADTANGO's accounts payable and receivable.

25 197. Following LERNA's assumption of such control, and due to such control, ADTANGO,
26 which had previously been able to collect from clients and which had paid vendors on time, fell
27
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1 into a state of dysfunction in regards to its accounts payable and receivable, as documented
2 above.

3 198. Even when LERNA received the funds from ADTANGO advertising sales, it has not
4 paid ADTANGO vendors, keeping upwards of \$200,000 owed to Facebook and other vendors
5 for itself.

6 199. While MR. ROWLAND has enriched himself, PLAINTIFFS have been substantially
7 harmed, loosing hundreds of thousands of dollars, damages to their business and reputations, in
8 an amount to be proved at trial.

9
10 **SEVENTH CLAIM FOR RELIEF**
11 **For Unjust Enrichment**
(Against Defendants LERNA and Alex ROWLAND)

12 200. PLAINTIFFS refer to and incorporate herein by this reference, all of the allegations
13 contained in paragraphs 1- 199 of this Complaint.

14 201. By reason of DEFENDANTS' wrongful conduct alleged herein, including
15 DEFENDANTS have been unjustly enriched by misappropriating to themselves funds that
16 rightfully belonged to ADTANGO, and have profited thereby.

17 202. In addition, PLAINTIFFS provided considerable value to DEFENDANTS, at the request
18 of DEFENDANTS by updating LERNA's AmpDesk platform. Such work entailed a precise
19 market value to be proven at trial but in any case for no less than \$76,000.

20 203. Meanwhile, despite promises to add value to PLAINTIFFS, by means, including without
21 limitation factoring and bookkeeping, DEFENDANTS, at all relevant times in this action,
22 provided no services of any value to PLAINTIFFS that have not already been compensated by
23 PLAINTIFFS.

24 204. As a direct and proximate result of their wrongful conduct, the DEFENDANTS, as
25 alleged hereinabove and as may be shown at trial in this action, have enriched themselves in an
26 amount not presently ascertained with certainty but which is in an amount not less than \$200,000
27 but likely more than \$400,000 above and beyond any value provided to PLAINTIFFS.
28

1 205. As such, these wrongful profits by DEFENDANTS should be discharged to
2 PLAINTIFFS as a matter of equity.

3 **EIGHTH CLAIM FOR RELIEF**
4 **For Conversion**
5 **(Against all DEFENDANTS)**

6 206. PLAINTIFFS refer to and incorporate herein by this reference, all of the allegations
7 contained in paragraphs 1- 205 of this Complaint.

8 207. DEFENDANTS, and each of them, have wrongfully converted, aided and abetted, and
9 caused to be converted, to their own use, property belonging to PLAINTIFFS.

10 208. At all relevant times in this action, and notwithstanding any business relationship with
11 DEFENDANTS, MR. DE CASTRO owned and had an exclusive right to possess his personal
12 GoDaddy Account (“GoDaddy Account”).

13 209. This exclusive right extends to all property – including without limitation the domain
14 names ADTANGO.com and ADTANGOMedia.com, and as a result all email addresses utilizing
15 @ADTANGO.com and @ADTANGOMEDIA.com – contained within the GoDaddy Account.

16 210. After DEFENDANTS hacked into and assumed control of the GoDaddy Account,
17 DEFENDANTS changed the password so that MR. DE CASTRO was no longer able to log in.

18 211. DEFENDANTS have used MR. DE CASTRO’s personal email to impersonate MR. DE
19 CASTRO, including but not limited to for communications with ADTANGO’s vendors and
20 clients.

21 212. At all times since DEFENDANTS have assumed control of the GoDaddy Account, MR.
22 DE CASTRO is informed and believes that DEFENDANTS have enjoyed exclusive control of
23 the GoDaddy Account, and all the property contained within it.

24 213. DEFENDANTS’ hacking was an intentional act, which substantially interfered with MR.
25 DE CASTRO’s personal account in that DEFENDANTS took possession of the property and
26 denied MR. DE CASTRO access to it.

27 214. MR. DE CASTRO did not consent to DEFENDANTS’ hacking of or access to the
28 GoDaddy Account.

1 215. MR. DE CASTRO has been harmed because unable to communicate with his business
2 contacts, which are vital to his livelihood as CEO of ADTANGO.

3 216. Further, damages to his reputation have occurred, and continue to occur, because when
4 DEFENDANTS assumed his identity, informed his business contacts that he has been fired from
5 ADTANGO (an act that DEFENDANTS had no authority to do), and are free to act in ways that
6 are generally averse to his interests.

7 217. DEFENDANTS' conduct was a substantial factor in causing the harm suffered by
8 PLAINTIFFS because without it caused MR. DE CASTRO to lose access to his personal and
9 valuable property. Without such loss of access, none of the damages would have occurred.

10
11 **NINTH CLAIM FOR RELIEF**
12 **For Rescission of Written Contract**
(Against all DEFENDANTS)

13 218. PLAINTIFFS refer to and incorporate herein by this reference, all of the allegations
14 contained in paragraphs 1- 217 of this Complaint.

15 219. Individual PLAINTIFFS MR. DE CASTRO and MR. BRINGAS entered into a SPA with
16 Defendant LERNA. For the purposes of this cause of action, PLAINTIFFS allege that was an
17 enforceable contract in regards to at least the relevant Termination provision.

18 220. Plaintiffs allege that while the SPA may have been signed, it was not completed, as
19 relevant performances were owed on each side, allowing for Plaintiffs' termination of the SPA
20 per its own terms.

21 221. Under the SPA, LERNA was to provide PLAINTIFFS with certain compensation.
22 Specifically, Section 2.4b(ii)) of the SPA requires LERNA to deliver shares to the PLAINTIFFS
23 in the form of stock options within ten days following the closing.

24 222. MR. DE CASTRO was to receive 300,000 shares' worth of stock options, and MR.
25 BRINGAS was to receive 200,000 shares' worth of stock options. (This information is not in
26 Exhibit A, which is where it should have been! The stock options were part of the consulting
27 agreements referenced in the SPA.
28

1 223. Given that LERNA's delivery of stock option agreements to BRINGAS and Castro was a
2 closing condition of the SPA, by failing to deliver the stock options, LERNA is prevented from
3 enforcing the contract.

4 224. In fact, as stated above, LERNA, as an LLC, has not even created shares that could
5 become stock options in LERNA for PLAINTIFFS; and thus one half of the consideration owed
6 to Plaintiffs under the SPA cannot be delivered.

7 225. LERNA's failure to deliver stock options to PLAINTIFFS represents a material breach;
8 stock options, and the attendant opportunity to obtain ownership in LERNA were an important
9 component of the compensation package for MR. DE CASTRO and MR. BRINGAS.

10 226. As a direct and proximate result of LERNA's breach of the SPA, PLAINTIFFS have
11 been harmed as to value of ownership in LERNA that the stock options would have provided, for
12 an amount to be proven at trial.

13 227. Per Section 6.3g of the SPA, PLAINTIFFS MR. DE CASTRO and MR. BRINGAS had
14 the right to terminate the SPA for LERNA's failure to provide valuable consideration in the form
15 of stock option agreement.

16 228. On December 11, 2015, through their counsel Nate Kelly, PLAINTIFFS MR. DE
17 CASTRO and MR. BRINGAS terminated the SPA in a manner fully compliant with the with the
18 relevant provisions of the SPA, including without limitation 6.3(g) and 8.4 of the SPA.

19 229. Despite this valid termination, LERNA has further breached the contract by continuing to
20 exercise control over ADTANGO and ADTANGO's assets. In fact, as above, LERNA has taken
21 affirmative, illicit "self-help" steps to increase such control, including without limitation
22 resorting to hacking the personal account of MR. DE CASTRO.

23 230. By failing to honor PLAINTIFFS' valid termination, LERNA has inflicted and continues
24 to inflict damages on PLAINTIFFS MR. DE CASTRO and MR. BRINGAS, for an amount to be
25 proven at trial.

26 231. **Furthermore**, the SPA is VOID and subject to rescission as a matter of law for failure of
27 consideration.
28

1 232. This is because, at no point since the signing of the SPA, even if otherwise valid, would
2 LERNA be able to provide the Stock Options promised; there was no Stock Option Plan, no set
3 value of the Stock, and no actual stock or total stock allocation at all!

4 233. Plaintiffs should not and cannot be forced to exchange their ADTANGO shares for
5 nothing – or the promise of shares that do not exist.

6 234. Further, as discussed above and below, although the contract would also be subject to
7 rescission for violations of the Securities laws, fraud, the fact is the SPA is subject to termination
8 by its own terms, which LERNA should be made to abide by.

9
10 **TENTH CLAIM FOR RELIEF**
11 **False Designation of Origin and False Advertising - 15 U.S.C. § 1125(a)**
 (Against all Defendants)

12 235. Plaintiffs incorporate herein by reference the averments of the proceeding paragraphs as
13 though fully set forth herein.

14 236. The ADTANGO marks are nonfunctional and their inherently distinctive quality has
15 achieved a high degree of consumer recognition and serves to identify ADTANGO as the source
16 of of high-quality services.

17 237. Defendants' promotion, advertising, sale, and/or offering for sale of counterfeit
18 ADTANGO services, using the ADTANGO Marks, is intended, and is likely to confuse,
19 mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or
20 affiliation of said products, and is intended, and is likely to cause such parties to believe in error
21 that Defendants' services have been authorized, sponsored, approved, endorsed or licensed by
22 ADTANGO, or that Defendants are in someway affiliated with ADTANGO.

23 238. Defendants' use of the ADTANGO Marks is without Plaintiffs' permission or authority
24 and is in total disregard of Plaintiff ADTANGO's rights to control its trademarks.

25 239. Defendants' acts have damaged and will continue to damage Plaintiffs, and Plaintiffs
26 have no adequate remedy at law.
27
28

1 240. In light of the foregoing, Plaintiffs are entitled to injunctive relief prohibiting Defendants
2 from using the ADTANGO Marks, or any marks confusingly similar thereto, and to recover all
3 damages, including attorneys' fees, that Plaintiffs have sustained and will sustain, and all gains,
4 profits and advantages obtained by Defendants as a result of their infringing acts alleged above
5 in an amount no yet known, as well as the costs of this action.

6
7 **ELLEVENTH CLAIM FOR RELIEF**
8 **State Unfair Competition under Cal. Bus. & Prof. Code §17200**
9 **(Against all Defendants)**

10 241. Plaintiff restates and reavers the allegations of Paragraphs 1 through 240, inclusive, and
11 the acts of Defendant asserted therein as if set forth in full as part of this Cause of Action.

12 242. The Defendant's above-averred actions will constitute trademark infringement and
13 passing off in violation of the common law of California.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, plaintiffs pray for judgment as follows:

- 16 A. Awarding Plaintiffs' damages, including interest;
17 B. Awarding Plaintiffs reasonable costs and attorneys' fees;
18 C. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a trial by jury.

21 Dated: February 20, 2016

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24
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Attorneys for Plaintiffs

VERIFICATION

I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PURJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS CONCERNING ALEXANDER ROWLAND, ADTANGO, INC., AND LERNA LLC ARE TRUE AND CORRECT TO THE BEST OF KNOWLEDGE AND UNDERSTANDING.

Dated: this 20th day of February, 2016.



Pedro Bringas



Mark De Castro